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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/564,145	01/10/2006	Hubert Steinke	3546	6124
7590	02/02/2010		EXAMINER	
Striker Striker & Stenby 103 East Neck Road Huntington, NY 11743			LOPEZ, MICHELLE	
			ART UNIT	PAPER NUMBER
			3721	
			MAIL DATE	DELIVERY MODE
			02/02/2010	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/564,145	STEINKE, HUBERT
	<b>Examiner</b>	<b>Art Unit</b>
	Michelle Lopez	3721

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 23 November 2009.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1,2,5,9-11,13-16,18,20-25 and 27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-2,5,9-11,13-16,18,20-25,27 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ .                                    |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ .  | 6) <input type="checkbox"/> Other: _____ .                        |

## **DETAILED ACTION**

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 11/23/09 has been entered.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-2, 5, 9-11, 13-16, 18, 20-23, and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Weber (GB 2171045) in view of Koutsky et al. (USPN 3,957,304).

Regarding claims 1 and 27, Weber discloses a rotary hammer, comprising: a main body 11; an impact mechanism (not shown numerically) integrated into the main body, wherein said impact mechanism generates axial impact impulses on a tool in a working direction (x); a handle 12 that is movably supported relative to the main body 11; and a vibration-shielding unit connecting the handle with the main body (as seen in fig. 3) and having a return element 14 that produces a spring force, wherein the vibration-shielding unit comprises a guide device for guiding a motion of the handle along a straight line in the working direction such that the handle is movable in the working direction against the spring force (see the Abstract); and wherein the guide device comprises two force-transmission elements 15 which are interconnected by a

connecting element 16, but does not specifically disclose wherein the transmission elements are interconnected by the connecting element to perform a scissors-type motion pivotal connection in a central region of at least one of said transmission elements. Koutsky teaches the concept of a shock absorbing mechanism 16, comprising: two transmission elements (not shown numerically) having ends connected to respective upper and lower frames, the transmission elements are interconnected at a central region by a connecting pin (see figs. 1 and 3) and are configured to perform the claimed scissors-type pivotal connection in a central region of at least the transmission elements for the purpose of providing a desired damped resiliency in a vertical direction of the frames (col. 2, lines 46-61). It would have been obvious to one having ordinary skill in the art to have provided Weber's transmission elements interconnected in a central region as taught by Koutsky in order to provide a desired damped resiliency in a vertical direction of Weber's main body and handle.

Regarding claims 1, 11, and 27, Weber also shows wherein the return elements 14 are arranged perpendicular to the working direction and engages<sup>1</sup> with each of the force transmission elements 15 (via the handle portions 12a-12b) on a side of each transmission elements that faces the handle 12; and wherein each of the transmission elements 15 is supported on at least one end (at the vicinity of 17) such that it is displaceable in a direction extending perpendicular to a direction of motion. Note that applicant recites wherein the return element *engages* with each of the transmission elements (claim 1) and at one of the two ends (claim 27). This broad limitation, i.e. engages, does not limit in any manner said return element to directly contact a surface of the transmission elements, rather requires said return element to be attached and or secure in some

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<sup>1</sup> Engages (verb) 9: to attach or secure

way to them. Weber shows wherein the return elements 14 are secured to the transmission element ends via the handle portions 12a-12b.

Regarding claim 2, Weber shows wherein the handle 12 is positioned at a distance away from the main body 11 (as seen in fig. 3).

Regarding claim 5, Koutsky shows wherein the connecting element (not shown numerically) is located at a central region of the transmission elements of the scissors-type shock-absorbing 16 as discussed above.

Regarding claims 9-10, Weber shows at least one elastically deformable impact-absorption element 18 and return elements as springs 14.

Regarding claims 13-15 and 18, Koutsky shows wherein the transmission elements cross-over each other about the connecting element, i.e. pin, and wherein the length of each transmission element is longer than its width; wherein one of the transmission elements divides the other into equal halves (figs. 1 and 3); both form an x-shape; and a central region, i.e. connecting pin, divides the transmission elements into equal halves.

Regarding claim 16, Weber does not specifically disclose wherein the distance between the handle element 12 and the tool body 11 has a value between 1 cm and 1.5 cm. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have provide said distance values as claimed, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

Regarding claims 20-23, Weber shows wherein each of the transmission elements 15 extends from a first bolt via connecting element 16 to a second bolt (at the vicinity of 17) which is arranged opposite to the first bolt 16. Note that the limitation of “extends from a first bolt via a connecting element” does not limit in any manner said first bolt and connecting element to be two separate components. Weber also shows wherein each of the elements 15 is displaceable supported in the second bolt (at the vicinity of 17) engaged in a slot 11c (see fig. 3); wherein movement of the elements 15 within slots 11c are limited by the end of the slots (fig. 3); and wherein one bolt 16 of each of the elements 15 is arranged at the handle 12 and the other bolt (at the vicinity of 17) is arranged at the main body 11.

3. Claims 24-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Weber (GB 2171045) in view of Koutsky et al. (USPN 3,957,304), as apply above in claim 1, and further in view of Smith (USPN 707,803).

The modified invention of Weber discloses a rotary hammer tool, comprising a vibration shielding unit having two transmission elements 15 which are interconnected with respect to each other in order to dampen vibrations in a working direction. Weber also shows wherein each of the transmission elements 15 has a first end at a single first bolt 16 and opposite ends displaceable supported in respective second bolts (at the vicinity of 17), wherein each second bolt is engaged in a respective slot arranged at the main body (as shown in fig. 3), but fails to disclose wherein each of the transmission elements has a first bolt at a first end and a second bolt at a second opposite end, one slot arranged at the handle, and one slot arranged at the main body. Smith teaches the concept of a clamp device having two beams 1-2 moveable with respect to each other in a vertical direction and connected by two levers 5-6 pivoting with a scissors-type

motion, wherein each of the beams 1-2 has a first end with a first bolt (at the vicinity of 5b-6b) and a second end with a second bolt 9-8, one slot 3 at the upper beam 2 and one slot 3 at the lower beam 1, wherein the second ends/bolts 9-8 are slidably received in the slots, respectively, for the purposes of moving the beams 1-2 with respect to each in the vertical direction while maintaining them parallel to each other at all times (as shown in lines 78-86). It would have been obvious to one having ordinary skill in the art to have provided the modified invention of Weber further providing the transmission elements with respective ends as claimed and each of the handle and main body having slots as claimed (as taught by Smith opposed slots 3) in order to efficiently move Weber's handle and main body with respect to each in a vertical direction while maintaining them parallel to each other at all times.

***Response to Arguments***

4. Applicant's arguments with respect to claims 1, 25, and 27 have been considered but are moot in view of the new ground(s) of rejection.
5. For the reasons above, the grounds of rejection are deemed proper.

***Conclusion***

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See the attached PTO-892 for related art.
7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michelle Lopez whose telephone number is 571-272-4464. The examiner can normally be reached on Monday - Thursday: 8:00 am - 6:00 pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi Rada can

be reached on 571-272-4467. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Michelle Lopez/  
Examiner, Art Unit 3721

/Rinaldi I Rada/  
Supervisory Patent Examiner, Art Unit 3721